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1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

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IN RE: )

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BELLSOUTH TELECOMMUNICATIONS, INC.'S ) Docket No.

6 ENTRY INTO LONG DISTANCE (INTERLATA) ) 97-00309

SERVICE IN TENNESSEE, PURSUANT TO )

7 SECTION 271 OF THE TELECOMMUNICATIONS )

ACT OF 1996 )

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12 TRANSCRIPT OF PROCEEDINGS

13 Monday, August 26, 2002

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24 Reported By:

Christina M. Rhodes, RPR, CCR

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1 (The aforementioned cause came on to  
2 be heard on Monday, August 26, 2002, beginning at  
3 approximately 10:00 a.m., before Chairman Sara Kyle,  
4 Director Deborah Taylor Tate, and Director Pat Miller,  
5 when the following proceedings were had, to-wit:)

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7 CHAIRMAN KYLE: Good morning. Please  
8 be seated. We are here today on Docket No. 97-00309,  
9 BellSouth's entry into long distance service pursuant  
10 to Section 271 of the Telecommunications Act of 1996.

11 We appreciate your attendance. I  
12 think Susan Berlin is joining us by phone.

13 You-all get a break today. You do not  
14 have to come forward. You do not have to comment. We  
15 appreciate your attendance in listening to our  
16 deliberations.

17 As you know, Commissioner Debi Tate  
18 has been the hearing officer for us on 271, and at this  
19 time I will ask that she preside for us.

20 DIRECTOR TATE: Thank you,  
21 Chairman Kyle. I want to again thank everyone, thank  
22 the parties, and especially our staff for their  
23 dedication over the past several years as we have moved  
24 through this 271 docket. I'm glad to see all of  
25 you-all here today, and I just would like to encourage

0003

1 you to get settled and get comfortable because this is  
2 going to take a little while. So I have a number of  
3 motions that I would like to make with regard to our  
4 comments to the FCC.

5                   Although a number of the items were  
6 stipulated to, in order to fulfill our duties as  
7 Directors and provide comments to the FCC, it is  
8 necessary for us to consider and deliberate upon the  
9 evidence presented to us. As a result, my motions are  
10 lengthy, and I would appreciate your patience this  
11 morning. But if no one objects, I think it clearer,  
12 cleaner, and more organized if we vote on each  
13 motion -- each checklist item separately.

14                   As a preliminary matter, my motions  
15 are based upon the record in this docket as of  
16 July 31st, 2002, as agreed to in the settlement  
17 agreement and the settlement agreement itself filed in  
18 this docket on August 8th, 2002; the FCC's comments in  
19 its recent order in the Georgia-Louisiana application;  
20 and the comments of the Department of Justice with  
21 regard to the 271 application filed jointly by Alabama,  
22 Kentucky, Mississippi, North Carolina, and South  
23 Carolina.

24                   Our first order of business then is to  
25 determine whether or not BellSouth has met the

0004

1 requirements of Section 271(c)(1)(A) of the  
2 Telecommunications Act of 1996, otherwise known to us  
3 as Track A. Approval of BellSouth's 271 application  
4 under Track A requires the existence of one or more  
5 binding agreements between BellSouth and a  
6 facilities-based competitor that have been approved  
7 under Section 252 of the Act.

8                   As part of its testimony in this  
9 proceeding, BellSouth claims that it has successfully  
10 negotiated or has arbitrated and this Authority has  
11 approved approximately 324 agreements with CLECs across  
12 Tennessee. Some of these CLECs provide  
13 facilities-based service. No party in this proceeding  
14 denied nor presented any evidence refuting this  
15 assertion.

16                   The intervenors allege that BellSouth  
17 is still the dominant local service provider and,  
18 therefore, the 271 application should not be approved.  
19 Whether or not one believes BellSouth's or the CLEC's  
20 particular market share analyses, it is undeniable that  
21 BellSouth has, through negotiations and/or arbitration  
22 effected numerous interconnection agreements with CLECs  
23 in Tennessee.

24                   This Section (A) of the Act is  
25 entirely silent on the market share or the power of the

0005

1 incumbent LECs, leading me to believe that these market  
2 share arguments advanced by the CLECs, particularly  
3 SECCA, have little, if any, relevance to the assessment  
4 of whether or not Track A requirements have been met  
5 that are before us today.

6                   The FCC also has found the same in its  
7 evaluation of BellSouth's 271 application in Georgia  
8 and Louisiana. The FCC concluded there, "Even if  
9 BellSouth's methodology inflates the total number of  
10 lines as the CLECs suggest, we still find there is an  
11 actual commercial alternative based on the sufficient  
12 number of voice customers served over competing LECs'  
13 own facilities." Moreover, having cited the DC Circuit  
14 Court where it found in Sprint versus FCC, "Congress  
15 specifically declined to adopt a market share or other  
16 similar test for BOC entry into long distance," the FCC  
17 ruled that BellSouth is not required to show that  
18 competitors have captured any particular market share.

19                   It should be noted, however, that  
20 BellSouth's estimates of CLEC penetration and the  
21 number of CLECs providing service do appear to be  
22 somewhat exaggerated here in Tennessee. According to  
23 the information collected by the TRA as of May 31st,  
24 2002, there were 37 CLECs offering facilities-based or  
25 UNI-based local service in the state. Those 37 CLECs

0006

1 serve approximately 396,000 access lines, excluding  
2 resale lines. Additionally, BellSouth has  
3 approximately 93 active facilities-based CLEC  
4 interconnection agreements in place as of May 31st,  
5 2002 here in Tennessee. Therefore, to reiterate,  
6 previous FCC and Federal District Court opinions hold  
7 that market share is not the test for entry into long  
8 distance.

9                   Based on these comments, I move that  
10 BellSouth be found to be in compliance with the  
11 requirements of 271(c)(1)(A) or Track A of the  
12 Telecommunications Act.

13                   CHAIRMAN KYLE: Thank you,  
14 Director Tate, I also want to say that I too appreciate  
15 all those involved who have worked so hard on this 271  
16 matter, and my comments also will be based on the  
17 record, the settlement agreements, the FCC comments,  
18 OCA comments, and others that you discussed,  
19 Commissioner Tate. My comment would be that BellSouth  
20 meets the Track A requirements as contained in Section  
21 271(c)(1)(A) of the 1996 Act.

22                   DIRECTOR MILLER: I concur.

23                   DIRECTOR TATE: As a part of this  
24 docket BellSouth also requests that the Authority find  
25 its statement of generally available terms, SGAT, to be

0007

1 consistent with Section 251 of the Act and contains  
2 cost-based rates for network elements per 252(d). The  
3 CLEC intervenors did not specifically address  
4 BellSouth's SGAT filing; therefore, I intend at the end  
5 of my statements to make a motion that will consolidate  
6 SGAT into Docket 01-00526, the generic docket to  
7 establish generally available terms and conditions.  
8 But I would first like to make a few statements to my  
9 fellow Directors.

10                   The SGAT functions as an  
11 interconnection agreement that a carrier can accept  
12 without the need for separate negotiation. Under  
13 Section 252(f)(1) of the Act, Bell Operating Companies  
14 may prepare and file with State commissions a statement  
15 of the terms and conditions that such company generally  
16 offers within that state to comply with the  
17 requirements of Section 252 and the regulations  
18 thereunder.

19                   Section 252(f)(2) of the Act instructs  
20 state regulators to not approve an SGAT unless such  
21 agreement is consistent with the regulations  
22 promulgated by the FCC under 251 and the cost-based  
23 pricing standards for network elements set forth in  
24 Section 252(d).

25                   Based upon the recent spate of changes

0008

1 stemming from the August 8th, 2002 settlement agreement  
2 in the 271 docket, which is Docket No. 97-00309, and  
3 the resultant adoption of the Florida performance plan  
4 in the performance measures docket, the SGAT as  
5 currently filed requires substantial revision before  
6 the agency can review much less before we can approve  
7 the SGAT.

8                   Deferring action on BellSouth's SGAT  
9 does not impair its ability to receive Section 271  
10 relief as they have filed a Track A 271 application,  
11 and a legally binding SGAT is not necessary to receive  
12 approval under Track A.

13                   The Authority in the existing generic  
14 docket, which is 01-00526, may want to consider  
15 consolidating the consideration of the SGAT. The goal  
16 of Docket 01-00526 is to establish a general set of  
17 terms and conditions reflecting the decisions of the  
18 agency that a carrier could adopt without negotiation.

19                   Should I take a recess?

20                   CHAIRMAN KYLE: No.

21                   DIRECTOR TATE: The agreement stemming  
22 from Docket 01-00526, like the SGAT, must also comply  
23 with the Act. Specifically, both agreements must  
24 conform to the interpretations of the Act rendered by  
25 the TRA. Given the common ground at the generic



0009

1 interconnection docket and BellSouth's SGAT, it seems  
2 logical that unless these two proceedings are just  
3 running parallel, the docket should be consolidated.  
4 Consolidation, as you-all have heard me say before,  
5 would promote judicial economy as the agency is well  
6 into the process of developing a record concerning the  
7 issues common to the SGAT.

8                   Therefore, I'd like to make a motion  
9 to consolidate the SGAT into 01 -- Docket 01-00526.

10                   I'm sorry. Can I take a recess?

11                   CHAIRMAN KYLE: Certainly.

12                   (Pause.)

13                   DIRECTOR TATE: Could we go back on  
14 the record?

15                   CHAIRMAN KYLE: Yes.

16                   DIRECTOR TATE: Therefore, it would be  
17 my intention to make a motion to consolidate the SGAT  
18 into Docket 01-00526, the generic docket to establish  
19 generally available terms and conditions for  
20 interconnection, as that is a different panel.

21                   DIRECTOR MILLER: I'm going to defer  
22 to the Chair. If the Chair chooses to consolidate  
23 those, then I'll go along with her authority as Chair  
24 to do that.

25                   CHAIRMAN KYLE: Thank you. My

0010

1 position would be that I want to approve SGAT.  
2 BellSouth's SGAT satisfies the requirements of Section  
3 251 and 252(d) of the Telecommunications Act of 1996  
4 and is hereby approved under Section 252(f) of the 1996  
5 Act.

6 Therefore, Commissioner Tate, the  
7 bottom line is I am not in agreement with your motion,  
8 respectfully. I stand on the position that I will  
9 approve the SGAT today.

10 DIRECTOR MILLER: Is that in the form  
11 of a motion or are you moving to --

12 CHAIRMAN KYLE: Yes, sir.

13 DIRECTOR MILLER: Okay. Again, my  
14 position has been that the Chair has the authority to  
15 consolidate dockets, and I am prepared today to second  
16 the Chair's motion to approve the SGAT.

17 CHAIRMAN KYLE: Commissioner Tate,  
18 we'll certainly respectfully keep your comments and  
19 wishes on record for any consideration down the road.

20 DIRECTOR TATE: Thank you.

21 The next order of business is to  
22 determine BellSouth's compliance with the 14-point  
23 checklist as provided in Section 271(c)(2)(B), which  
24 states, "Access or interconnection provided or  
25 generally offered by Bell operating company to other

0011

1 telecommunications carriers meets the requirements of  
2 this subparagraph if such access and interconnection  
3 includes each of the following..."

4                   Here we begin our consideration of  
5 this checklist with Item 1, which requires  
6 "Interconnection in accordance with the requirements of  
7 Sections 251(c)(2) and 252(d)(1)."

8                   When determining compliance with  
9 Checklist Item 1, the FCC examines performance with  
10 respect to provision of interconnection trunks and  
11 collocation. In the Georgia and Louisiana order, the  
12 FCC concurred with the Georgia and Louisiana  
13 Commissions that BellSouth's performance is sufficient.  
14 The Authority's records indicate that there are  
15 presently approximately 105 active interconnection  
16 agreements between BellSouth and various CLECs in  
17 Tennessee. The data provided by BellSouth in this  
18 proceeding is comparable to that provided to the FCC in  
19 the Georgia and Louisiana proceeding such that I  
20 believe BellSouth's data shows adequate performance.  
21 Further, the record demonstrates that BellSouth  
22 provides various methods to allow CLECs to  
23 interconnect.

24                   Thus, I would move that the Directors  
25 find BellSouth has complied with the requirements of

0012

1 Checklist Item No. 1.

2 CHAIRMAN KYLE: I would agree that  
3 BellSouth complies with this checklist item.

4 DIRECTOR MILLER: I agree.

5 DIRECTOR TATE: Checklist Item No. 2  
6 is nondiscriminatory access to network elements.  
7 "Nondiscriminatory access to network elements in  
8 accordance with the requirements of Section 251(c)(3)  
9 and 252(d)(1)."

10 On August 8th, 2002 a settlement  
11 agreement was filed in this docket. The agreement  
12 requested that, one, the record be closed as of  
13 July 31st, 2002.

14 Docket 01-00362 or the OSS docket be  
15 closed. However, this should not prevent the parties  
16 from filing complaints with the Authority regarding  
17 BellSouth's OSS in the future.

18 Number 3, the Georgia performance plan  
19 is to act as the interim performance plan and the  
20 Florida performance plan, with the addition of the  
21 Tennessee Special Access measures, will become the  
22 permanent plan as of December 1st, 2002.

23 And, four, the CLECs be allowed to  
24 request the TRA to open a generic contested case  
25 proceeding to address expeditiously the issue of

0013

1 BellSouth's provision of DSL service to CLEC voice  
2 customers and related OSS issues. In return, the  
3 majority of intervenors withdrew their opposition to  
4 BellSouth's application.

5                   This Authority, as you-all remember,  
6 unanimously accepted the settlement agreement. I plan  
7 to instruct the staff to issue a data request to obtain  
8 from BellSouth an itemized list of all enforcement  
9 mechanisms paid and their corresponding metrics in  
10 conjunction with any and all payments for both the  
11 interim and the permanent performance plan. The  
12 information supplied in this response can be used by  
13 parties in pinpointing areas of needed attention as  
14 well as verification of payments made under the  
15 performance measures self-effectuating enforcement  
16 mechanisms known as SEEMs, as opposed to sifting  
17 through pages and pages of reports.

18                   On February 23rd, 2001 the Authority  
19 ordered permanent prices for collocation elements and  
20 UNI rates. BellSouth was further ordered to issue  
21 tariffs containing UNI rates approved in this docket  
22 and based on cost studies by BellSouth. These rates  
23 were determined in a contested case proceeding. I do  
24 not agree with WorldCom's argument that BellSouth's UNI  
25 rates are excessive because they are based on

0014

1 out-of-date technology. This issue was actually  
2 addressed in the line sharing docket, 00-00544, in  
3 which the Authority ordered the use of dual-purpose  
4 line cards, a decision which was recently stayed.

5                   In light of the findings of these two  
6 dockets and the lack of any evidence that BellSouth's  
7 rates are not based on TELRIC methodology, the record  
8 shows that BellSouth provides UNEs at rates that are  
9 nondiscriminatory.

10                   In determining whether or not  
11 BellSouth offers access to UNEs in compliance with  
12 Checklist Item 2, the performance measures submitted as  
13 part of the testimony of BellSouth's witness Mr. Varner  
14 must be reviewed. The argument by the CLECs that these  
15 measures are inappropriate is moot considering the  
16 settlement agreement. Furthermore, the Georgia SQMs  
17 have been the subject of three audits and have been  
18 deemed to be appropriate by the FCC in support of other  
19 BellSouth state applications.

20                   Upon review of the November,  
21 December 2001 and January 2002 service quality  
22 measures, SQMs, as submitted as an attachment to  
23 Mr. Varner's testimony, the benchmarks were not  
24 achieved every month, but the failures were not  
25 consequential enough to determine a systematic failure

0015

1 by BellSouth. Therefore, I believe that we can  
2 conclude that BellSouth has satisfactorily achieved the  
3 benchmarks established to measure preordering  
4 performance.

5                   For a majority of the ordering metrics  
6 BellSouth either met or exceeded the benchmark as  
7 established in the Georgia service quality measures for  
8 November, December, and January. Utilizing the  
9 methodology established by the FCC in Georgia and  
10 Louisiana's order, BellSouth does not have to achieve  
11 the benchmark for flow through providing it processes  
12 manual orders in a compliant manner.

13                   Upon review of the aforementioned  
14 SQMs, BellSouth failed to consistently meet the  
15 benchmark for flow through; however, BellSouth did meet  
16 the benchmark for firm order commitments and reject  
17 interval for partially mechanized and manual orders on  
18 the majority of the subitems. The subitems that did  
19 not achieve the benchmark had significantly lower  
20 volumes than the successful submetrics; therefore, we  
21 can find that BellSouth is compliant on the majority of  
22 the items reported.

23                   The remaining issues reported as below  
24 the established benchmark include the measure that  
25 BellSouth asserts are not probative, FOC and reject

0016

1 response completeness multiple responses. Although the  
2 CLECs argue that BellSouth engages in "serial  
3 clarification," they failed to submit any evidence in  
4 support of this argument or comment regarding to this  
5 particular measure. Therefore, the record supports  
6 BellSouth's assertion that this measure does not relay  
7 pertinent information to this Authority, as there are  
8 legitimate reasons for multiple responses.

9                   Upon review of the SQMs for  
10 provisioning, BellSouth's performance was at parity  
11 with retail. The record indicates in the instances  
12 where BellSouth's service was inferior to that which it  
13 provides itself, the volumes in question were too low  
14 to warrant a determination of noncompliance. The  
15 performance reported for service accuracy for November  
16 through January failed to meet the Georgia benchmark  
17 for all the submetrics, although this also isn't enough  
18 to warrant a finding on noncompliance for an entire  
19 checklist item, but we should continue to monitor  
20 BellSouth's performance. The same is also true of  
21 Percent Provisions Troubles within 30 days.

22                   Reviewing the SQMs for maintenance and  
23 repair, again BellSouth either meets or exceeds the  
24 benchmark on the majority of the measures. For the  
25 measures where BellSouth's performance is less than the



0017

1 benchmark, the volumes are significantly lower than the  
2 successful submetrics, therefore, having a minimal  
3 impact on the CLECs ability to compete.

4                   For the remaining measures in the  
5 SQM -- billing, collocation, and change control --  
6 BellSouth is predominately compliant with all but two  
7 billing measures, billing accuracy and usage data  
8 delivery timeliness. The billing accuracy measure is a  
9 parity measure, and although BellSouth failed to meet  
10 the measure for the month of January, the discrepancy  
11 was less than 1 percent. As with similar measures, we  
12 will continue to monitor BellSouth's performance in all  
13 of these areas.

14                   Despite the performance results for  
15 change control, I share the Department of Justice's  
16 concern regarding this important process. Although  
17 sympathetic to BellSouth's argument that the CLECs are  
18 merely complaining about their inability to exact total  
19 control over change control, many of the CLECs'  
20 arguments go beyond that particular issue.

21                   Of particular concern is a backlog of  
22 changes that the CLECs claim will take nine months to  
23 fully implement and BellSouth's rush to deploy releases  
24 before they have been adequately tested. It is well  
25 understood that BellSouth should be anxious to resolve

0018

1 the issues as they pursue their 271 application, but to  
2 do so at the expense of the CLECs they are attempting  
3 to appease is shortsighted. It's well documented in  
4 the record that both the Georgia and Florida  
5 Commissions are heavily involved in developing policies  
6 as they relate to this change control.

7                   It would be -- I think it would be  
8 imprudent for us to arbitrarily step in at this  
9 juncture and begin to impose more policies in light of  
10 the regional nature of change control. For this  
11 reason, I would like to direct our staff to issue a  
12 data request to obtain an updated CCP issue list from  
13 BellSouth and the applicable status of the issues with  
14 all the other state commissions and the FCC.

15                   I would also like our comments to the  
16 FCC to reflect that we would support the establishment  
17 of a regional committee to address CCP issues. Such a  
18 committee, if established, could certainly provide --  
19 more efficiently provide guidance on a regional rather  
20 than a state-by-state basis. An added benefit is the  
21 savings in cost and manpower that could be realized for  
22 both all of our commission and the industry as well.

23                   The issue of BellSouth's refusal to  
24 provide its Fast Access Service to customers that  
25 choose a CLEC as their voice provider was the subject

0019

1 of heated debate not only in this proceeding but also  
2 in previous applications to the FCC. Although the FCC  
3 found that BellSouth's policy was compliant with its  
4 rules, other state commissions have taken action,  
5 notably Florida and Kentucky. However, there may be  
6 concerns regarding the FCC's policy in light of the  
7 residential penetration in Tennessee. Pursuant to the  
8 settlement agreement, these concerns will be addressed  
9 in a separate docket.

10                   According to the testimony filed by  
11 BellSouth, the single "C" order process for UNI-P  
12 conversions should have been implemented in Tennessee  
13 as of August 2002. According to AT&T, problems with  
14 customer outages continued even after the  
15 implementation of a single order. BellSouth contends  
16 that the issue only affected 0.046 percent of UNI-P  
17 conversions ordered through the single "C" order  
18 process, and, furthermore, the issue should have been  
19 alleviated. Although this affects a very small number  
20 of orders, if the Authority takes a special interest in  
21 this item, unnecessary outages in consumer services may  
22 be prevented in the future.

23                   I would like to also direct the staff  
24 to issue a data request to require BellSouth to file an  
25 update on the single "C" order process as it has been

0020

1 implemented in Tennessee.

2 With regard to the other issues  
3 brought forth by the CLECs, AT&T's complaint about  
4 application of rates in their interconnection agreement  
5 and Ernest Communications FLEX ANI, these items are  
6 misplaced in this particular docket. These issues  
7 would be more appropriately handled as individual  
8 complaints.

9 Therefore, I would move that the  
10 Authority find that BellSouth provide CLECs with access  
11 to network elements on an unbundled basis at any  
12 technically feasible point on rates, terms, and  
13 conditions that are just, reasonable, and  
14 nondiscriminatory.

15 CHAIRMAN KYLE: Thank you,  
16 Commissioner Tate.

17 My position would be that BellSouth is  
18 providing or generally offering nondiscriminatory  
19 access to network elements in accordance with the  
20 requirements of Section 251(c)(3) and 252(d)(1) and,  
21 therefore, is in compliance with Checklist Item 2.

22 DIRECTOR MILLER: I concur in finding  
23 BellSouth in compliance with Checklist Item 2.

24 DIRECTOR TATE: Moving on. Checklist  
25 Item No. 3, "Nondiscriminatory access to poles, ducts,

0021

1 conduits, and rights-of-way owned or controlled by the  
2 Bell Operating Company at just and reasonable rates in  
3 accordance with the requirements of Section 224."

4                   The parties stipulated to this 271  
5 checklist item.

6                   BellSouth has methods and procedures  
7 in place for access to BellSouth's poles, ducts,  
8 conduits, and rights-of-way. The procedures are set  
9 forth in its license agreement for rights-of-way,  
10 conduits, and pole attachments. Negotiating carriers  
11 and BellSouth have agreed to the terms of the license  
12 agreement in numerous instances. As such, BellSouth  
13 contends that it meets the criteria of this checklist  
14 item.

15                   BellSouth's license agreement places a  
16 time period for itself and new entrants to access  
17 poles, ducts, conduits, and rights-of-way. BellSouth  
18 has requested that entrants occupy the space within 12  
19 months of the day the space is assigned. Additionally,  
20 no party contested BellSouth meeting this checklist  
21 item.

22                   Therefore, I would move that the  
23 Directors find that BellSouth has complied with the  
24 requirements of Checklist Item No. 3.

25                   CHAIRMAN KYLE: I would concur that

0022

1 BellSouth is providing or generally offering  
2 nondiscriminatory access to the poles, ducts, conduits,  
3 and rights-of-way owned or controlled by the Bell  
4 Operating Company at just and reasonable rates in  
5 accordance with the requirements of Section 224 and,  
6 therefore, is in compliance with Checklist Item 3.

7                   DIRECTOR MILLER: I find that  
8 BellSouth has complied with the requirements of  
9 Checklist Item 3 as well.

10                   DIRECTOR TATE: Checklist Item No. 4,  
11 "Local loop transmission from the central office to the  
12 customer's premises unbundled from local switching or  
13 other services."

14                   To determine whether or not BellSouth  
15 has met the requirements of Checklist Item 4, the  
16 Authority must determine if BellSouth provides loop  
17 facilities from central offices to customer premises  
18 unbundled from local switching or other network  
19 elements. In its recent order in the Georgia and  
20 Louisiana 271 applications, the FCC stated that  
21 satisfactory performance data is sufficient to show  
22 nondiscriminatory access to unbundled loop facilities.

23                   Upon review of the performance data  
24 submitted in support of Checklist Item 4, a similar  
25 conclusion can be drawn in Tennessee. The data reveals

0023

1 no systemic problems associated with either BellSouth's  
2 provisioning or maintenance and repair activities  
3 associated with unbundled loops. BellSouth, with only  
4 limited exceptions, met parity as compared to a retail  
5 analog for the majority of reported performance  
6 metrics.

7                   BellSouth explained its failure to  
8 meet the benchmark and its actions to mitigate it.  
9 BellSouth's discussion of its measures to mitigate a  
10 minor deviation from acceptable performance favorably  
11 demonstrates BellSouth's willingness to provide access  
12 to unbundled loops at a level above and beyond that  
13 which constitutes nondiscriminatory access.

14                   Also the record does not support  
15 Covad's argument that BellSouth's installation of DLC  
16 services is effectively re-monopolizing the local loop.  
17 Covad has other options available so that it can  
18 provide service to customers behind DLC remote  
19 terminals. Additionally, while Covad asserted that  
20 BellSouth has not provided line sharing within the time  
21 interval specified by its interconnection agreement,  
22 curiously it has not sought relief from the agency and  
23 has not filed a complaint against BellSouth.

24                   Therefore, I move that BellSouth has  
25 complied with the requirements in Checklist Item No. 4.

1 CHAIRMAN KYLE: BellSouth is providing  
2 or generally offering local loop transmission from the  
3 central office to the customer's premises unbundled  
4 from local switching or other services and, therefore,  
5 is in compliance with Checklist Item 4 is my motion.

6 DIRECTOR MILLER: I find that  
7 BellSouth has complied with the requirements of  
8 Checklist Item 4.

9 DIRECTOR TATE: Checklist Item No. 5,  
10 "Local transport from the trunk side of a wire line  
11 local exchange carrier switch unbundled from switching  
12 or other services."

13 In the ICG arbitration, Docket No.  
14 99-00377, the Authority determined that BellSouth's  
15 provisioning of enhanced extended loops, EELs -- I just  
16 love all these names -- which are unbundled local loops  
17 that are cross-connected to interoffice transport, is  
18 consistent with the requirements of the Act and related  
19 federal rules and orders. In that same docket the  
20 Authority found that it is appropriate public policy to  
21 require BellSouth to provide EELs. Such a requirement  
22 fosters competition in the telecommunications market by  
23 allowing competing carriers to serve areas without  
24 having to install their own switches, trunks, and  
25 loops, or without having to collocate in



0025

1 BellSouth-owned and -operated central offices.

2                   The record in this docket is  
3 sufficient to support the conclusion that BellSouth has  
4 met the requirements of this checklist item. BellSouth  
5 has testified that it provides unbundled transport to  
6 competitive carriers in a nondiscriminatory manner, and  
7 it has demonstrated the existence of a number of  
8 dedicated and common transport arrangements provided to  
9 those carriers. Furthermore, none of the parties  
10 provided testimony challenging BellSouth's assertion  
11 that it does so.

12                   Therefore, I would move that BellSouth  
13 has complied with the requirements of Checklist Item  
14 No. 5.

15                   CHAIRMAN KYLE: My position is that  
16 BellSouth is providing or generally offering local  
17 transport from the trunk side of a wire line local  
18 exchange carrier switch unbundled from switching or  
19 other services and, therefore, is in compliance with  
20 the Checklist Item 5.

21                   DIRECTOR MILLER: I find that  
22 BellSouth has complied with the requirements of  
23 Checklist Item 5.

24                   DIRECTOR TATE: You-all will be happy  
25 to know we're almost halfway through.